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Pakistan yet to enact anti-torture law

Waseem Ahmad Shah | Published June 26, 2017

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The United Nations International Day in Support of Victims of Torture is annually observed on June 26. While Pakistan is a signatory to the UN Convention against Torture and other Cruel, Inhuman or Degrading

to criminalise torture in the country could not be enacted so far.

This convention was adopted and opened for signature and ratification by the General Assembly on Dec 10, 1984. The government of Pakistan signed the convention on Apr 17, 2008, and ratified it on June 23, 2010. The Instrument of its Ratification was signed by the then president, Asif Ali Zardari.

Initially, the CAT was ratified with certain observations related to some of its Articles and the government had declared that certain articles of CAT should be so applied to the extent that they are not repugnant to the provisions of the Constitution of Pakistan and the Sharia law. However, in 2011 Pakistan partially withdrew its reservations related to some of the provisions of CAT.

An Optional Protocol to CAT was also adopted by the General Assembly on Dec 18, 2002, and it entered into force on Jun 22, 2006. The Government of Pakistan has so far not signed or ratified the optional protocol. The objective of the Optional Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

mechanism to compensate the torture victims and survivors.

The Senate of Pakistan had passed the proposed Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Act, 2015, in Mar 2015. The said Bill was tabled by Senator Farhatullah Babar. However, the Bill could not be passed by the National Assembly in the stipulated 90 days' time. Recently, on Feb 13 Senate passed a resolution for referring the said bill to a joint sitting of the Parliament.

The proposed law defines torture as "an act committed by any person, including a public servant, or at the instigation of or with the acquiescence of any other person, with specific intent to inflict physical or mental pain or suffering, not incidental to lawful sanctions, upon another person within his custody, for the purpose of: (i) Obtaining from that person or some other person any information or a confession; or (ii) Punishing that person for any act he or a third person has committed or is suspected of having committed; or (iii) Intimidating or coercing that person or a third person; or (iv) For any other reason based on discrimination of any kind; or (v) Harassing, molesting, or causing harm whether physical or mental to a female for any of the above purposes."

It envisages sentence from five to 10 years with fine of up to one million rupees for those who commits, or

prevent the commission of torture shall be punished with imprisonment for a term up to five years but not less than three years with fine up to Rs500,000.

The proposed law also recommends sentence of life imprisonment with fine of up to Rs three million for the offences of custodial death or custodial rape.

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It also provides that a female shall not be detained in order to extract information regarding the whereabouts of a person accused of any offence or to extract evidence from such female. It adds that no female shall be taken or held in custody by a male and only a female public servant can lawfully take a female into custody.

Presently, article 14(2) of the Constitution of Pakistan prohibits torture in custody. It states: “No person shall be subjected to torture for the purpose of extracting evidence.”

confession and this offence is punishable up to 10 years imprisonment.

Furthermore, the Police Order 2002 includes section 156 (d) stating that whoever, being a police officer, inflicts torture or violence on any person in his custody shall on conviction be punished with imprisonment for a term, which may extend up to five years and with fine.

In Khyber Pakhtunkhwa the Police Order, 2002, was replaced with The Khyber Pakhtunkhwa Police Act, 2017, early this year. Section 119 (d) of the Police Act provides that whoever, being a police officer inflicts torture or violence to any person in his custody shall on conviction be punished and sentenced up to five years imprisonment with fine.

Legal experts believe that custodial torture is an admissible phenomenon here. Under the Code of Criminal Procedure (CrPC), a suspect could be remanded into custody of police for 15 days. Section 167 of the CrPC permits a magistrate to remand an accused person into custody of police for maximum of 15 days.

Similarly, section 21 E of the Anti-Terrorism Act 1997 empowers the anti-terrorism court to remand a person detained for investigation to custody for maximum 15 days, but in case the investigation officer proves that

The Human Rights Commission of Pakistan, in one of its reports, has recommended to the government to hold public debate on the proposed law. It also called upon the federal government to provide trainings and access to modern and scientific methods of investigations to law enforcement agencies and the judiciary and shift away from inhumane methods of investigation and extraction of confessions through torture.

Experts on criminal law believe that there should be an independent body that investigate and prosecutes government functionaries including members of law enforcing agencies accused of torture and other forms of ill-treatment.

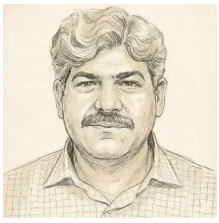
Apart from enacting the proposed law at the earliest, the government may also ratify the optional protocol to the CAT.

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